

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Donald Nixon,

Plaintiff,

–v–

Berkshire Hathaway, Inc.,

Defendant.

20-cv-2253 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On April 17, 2020, Defendant filed a motion to dismiss. Pursuant to Rule 3.F of this Court’s Individual Practices in Civil Cases, on or before April 27, 2020, Plaintiff must notify the Court and his adversary in writing whether (1) he intends to file an amended pleading and when he will do so or (2) he will rely on the pleading being attacked. Plaintiff is on notice that declining to amend his pleadings to timely respond to a fully briefed argument in the Defendant’s April 17 motion to dismiss may well constitute a waiver of the Plaintiff’s right to use the amendment process to cure any defects that have been made apparent by the Defendant’s briefing. *See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC.*, 797 F.3d 160, 190 (2d Cir. 2015) (leaving “unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility”).

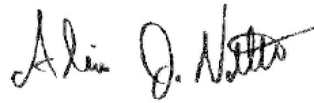
If Plaintiff chooses to amend, Defendant may then (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter stating that it relies on the initially-filed motion to dismiss.

Nothing in this Order alters the time to amend, answer or move provided by the Federal Rules of Civil Procedure or Local Rules.

The initial pretrial conference scheduled for August 7, 2020 is adjourned pending resolution of this motion.

SO ORDERED.

Dated: April 21, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", with a stylized flourish at the end.

ALISON J. NATHAN
United States District Judge